Supreme Court, U.S.
FILED
NOV 6 1985
JOSEPH F. SPANIOL, JR.
CLERK

85-787

No. 85-

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

RUSSELL D. DAVES,
Appellant,

v.

THE STATE BAR OF TEXAS,
Appellee.

ON APPEAL TO THE COURT OF APPEALS FOR THE SEVENTH SUPREME JUDICIAL DISTRICT OF TEXAS

JURISDICTIONAL STATEMENT

David C. Vladeck
(Counsel of Record)
Alan B. Morrison
John Cary Sims

Public Citizen Litigation Group
Suite 700
2000 P Street, N.W.
Washington, D.C. 20036
(202) 785-3704

Attorneys for Appellant

November 6, 1985

CASILLAS PRESS INC - 1717 K STREET NW, WASHINGTON DC - 223-1220

QUESTION PRESENTED*

May a state, consistent with the First Amendment, discipline an attorney for publishing a newspaper advertisement offering to handle routine, uncontested divorces at fixed fees, in language virtually identical to that approved by this Court in *Bates v. State Bar of Arizona,* 433 U.S. 350 (1977), solely because the attorney did not include in his advertisement the statement that he was "Not certified by the Texas Board of Legal Specialization" as an expert in family law?

*There are no parties to this proceeding other than those listed in the caption.

TABLE OF CONTENTS

Page

QUESTION PRESENTED ..... (i)

OPINIONS BELOW 1

JURISDICTION OF THIS COURT 2

CONSTITUTIONAL PROVISION AND RULE INVOLVED 3

STATEMENT OF THE CASE 3

THIS APPEAL PRESENTS AN IMPORTANT QUESTION UNDER THE FIRST AMENDMENT 9

CONCLUSION 14

APPENDIX A:
Order of the Supreme Court of Texas 1a

APPENDIX B:
Decision of the Court of Appeals for the Seventh Supreme Judicial District of Texas 3a

APPENDIX C:
Orders of the District Court for Lubbock County, 237th Judicial District of Texas 14a

APPENDIX D:
Notice of Appeal to the Supreme Court of the United States 18a

TABLE OF AUTHORITIES

Cases: **Page:**

Bates v. State Bar of Arizona,
433 U.S. 733 (1977) ..... *passim*

Central Hudson Gas & Electric Corp. v. Public Service Comm'n,
447 U.S. 557 (1980) 9, 11

In re Primus,
436 U.S. 412 (1978) 9

In re R.M.J.,
455 U.S. 191 (1982) ..... *passim*

Miami Herald Publishing Co. v. Tornillo,
418 U.S. 241 (1974) 13

Ohralik v. Ohio State Bar Ass'n,
436 U.S. 447 (1978) 9

Zauderer v. Office of Disciplinary Counsel,
105 S. Ct. 2265 (1985) ..... *passim*

Statutes and Constitutional Provision:

U.S. Constitution, First Amendment ..... *passim*

Tex. Rev. Civ. Stat. Ann., art. 320a-1, Art. 10, § 9 (Code of Professional Responsibility) DR 2-101(C)(2) ..... *passim*

Tex. Rev. Civ. Stat. Ann., art. 320a-1, Art. 11, § 24 8

Tex. Fam. Code. Ann. § 3.01 4

Page:

Other Authorities:

Johnson, *Yellow Pages Legal Ads In Texas: The Complexities of DR 2-101(B) & (C)*, 17 St. Mary's Law J. 1 (1985) 13

Vol. I, No. 22, *The Texas Lawyer* (September 11, 1985) 5, 13

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

No. 85-

RUSSELL D. DAVES,
Appellant,

v.

THE STATE BAR OF TEXAS,
Appellee.

ON APPEAL TO THE COURT OF APPEALS FOR THE SEVENTH SUPREME JUDICIAL DISTRICT OF TEXAS

JURISDICTIONAL STATEMENT

OPINIONS BELOW

The Order of the Supreme Court of Texas refusing appellant's petition for a writ of error, issued on September 11, 1985, is set forth in Appendix A (App. 1a) and is not reported. The opinion of the Court of Appeals for the Seventh Supreme Judicial District of Texas is set forth in Appendix B (App. 3a-13a) and is reported at 691 S.W.2d 784. The orders of the District Court for Lubbock County, Texas Judicial District 237, are set forth in Appendix C (App. 14a-17a) and are not reported.

JURISDICTION OF THIS COURT

This is an appeal from a final order disciplining an attorney for placing a newspaper advertisement. Appellant challenges the validity of Disciplinary Rule 2-101(C)(2) of the Rules Governing the State Bar of Texas issued by the Supreme Court of Texas, Tex. Rev. Civ. Stat. Ann. art. 320a-1 *et seq.* (Vernon's Supp. 1985), on the ground that the Rule violates the First Amendment to the United States Constitution. The order of the Supreme Court of Texas was entered on September 11, 1985 (App. 1a), and notices of appeal were filed on October 30, 1985 in the Supreme Court of Texas and in the Court of Appeals for the Seventh Supreme Judicial District of Texas, which has possession of the record (App. D, 18a-21a). Because 28 U.S.C. § 2403(b) may be applicable, a copy of each of the notices of appeal was served on the Attorney General of Texas. *See* Rule 28.4(c) of the Rules of this Court. Jurisdiction is based on 28 U.S.C. § 1257(2). If the Court determines that an appeal is not proper in this case, it is respectfully requested that the papers be treated and acted on as a petition for a writ of certiorari pursuant to 28 U.S.C. § 2103.[1]

---

[1]Because the Supreme Court of Texas refused to hear appellant's petition for a writ of error, appellant has styled this appeal as one from the Court of Appeals for the Seventh Supreme Judicial District of Texas, which was the highest state court to review appellant's case on the merits. *Cf.* Rule 483, Texas Rules of Procedure. However, because of the ambiguities which inhere in the discretionary review procedures of the Supreme Court of Texas, appellant filed notices of appeal with both courts. If this Court concludes that this appeal should be taken from the Supreme Court of Texas, appellant requests that this jurisdictional statement be treated as an appeal from that court.

CONSTITUTIONAL PROVISION AND RULE INVOLVED

The First Amendment to the United States Constitution provides in pertinent part:

> Congress shall make no law . . . abridging the freedom of speech . . . .

The pertinent provision of the Rules Governing the State Bar of Texas (the "Rules") provides that an attorney advertising a legal service in a particular area of law:

> Who has not been awarded a Certificate of Special Competence by the Texas Board of Specialization in the area so advertised must state with respect to each area, "Not certified by the Texas Board of Legal Specialization." Where the area so advertised has not been designated as an area in which a lawyer may be awarded a Certificate of Special Competence by the Texas Board of Legal Specialization, the lawyer may also state, "No designation has been made by the Texas Board of Legal Specialization for a Certificate of Special Competence in this area." Such statements must be displayed conspicuously so as to be easily seen or understood by any consumer.

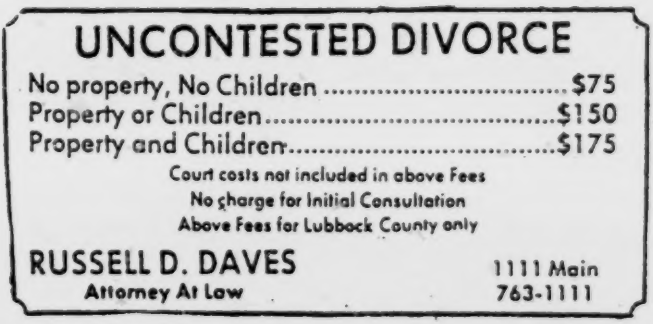
Rules Governing the State Bar of Texas, Art. X, § 9 (Code of Professional Responsibility) DR 2-101(C)(2) (Vernon's Supp. 1985).

STATEMENT OF THE CASE

This appeal challenges the finding of misconduct against appellant for placing a newspaper advertisement indicating his availability to handle routine, uncontested

divorces at fixed fees, solely because he did not include in the advertisement the statement that he was "Not certified by the Texas Board of Legal Specialization" as an expert in family law. The facts giving rise to this case are not in dispute and will be summarized briefly.

Appellant graduated from law school in 1977, and since then he has been engaged in the general practice of law in Lubbock, Texas. A major component of appellant's practice has been in family law, primarily routine uncontested divorces. Texas has enacted a "no-fault" divorce law, which makes available simple procedures for obtaining an uncontested divorce. *See* Tex. Fam. Code Ann. § 3.01 *et seq.* (Vernon's 1975). In an effort to attract clients and to provide information relating to the very low fees that he charges for handling such cases, appellant placed the following advertisement in the *Lubbock Avalanche Journal* on October 27, 1983:


UNCONTESTED DIVORCE

No property, No Children $75
Property or Children $150
Property and Children $175

Court costs not included in above Fees
No charge for Initial Consultation
Above Fees for Lubbock County only

RUSSELL D. DAVES
Attorney At Law

1111 Main
763-1111

Appellant had run the same advertisement on a daily basis for a number of years without any disciplinary charges being brought.

Shortly after the October 27 advertisement appeared, a lawyer who had seen it filed a complaint with the Grievance Committee of the appellee State Bar of Texas alleging

that appellant's advertisement failed to include the statement of non-certification required by the 1982 amendment to Texas DR 2-101(C)(2). After a brief administrative proceeding, the State Bar filed a complaint in the District Court for Lubbock County, 237th Judicial District, which charged appellant with violating DR 2-101(C)(2). Appellee sought to have Mr. Daves reprimanded, suspended, or disbarred from practice.[2]

Appellant filed an answer which raised a First Amendment defense, and the State Bar promptly moved for summary judgment. The Bar argued that the requirement that lawyers prominently display a statement of non-certification in all advertising passed constitutional muster because it was needed to assure that the public was not misled. Specifically, the Bar's memorandum claimed that "the ordinary consumer might reasonably believe that the defendant exclusively takes such cases and that he has most likely developed a high degree of expertise in this area." The statement of non-certification, the Bar contended, informs the public that "objective professional standards exist for that area of the law and that the advertising attorney has not yet qualified for certification." In

---

[2]Before the disciplinary proceedings were brought, appellant had applied for, and been denied, certification as a specialist in family law. That determination has been appealed, and the matter is still pending before the State Bar. Under the certification process, panels of lawyers in each area of specialization are responsible for setting eligibility criteria and determining whether applicants should be certified. An applicant who is denied certification by the panel may appeal to the State Bar, but not to the Supreme Court of Texas or any other judicial body. To date, even though the certification program in family law has been in operation since 1975, only 389 of the over 40,000 lawyers admitted to practice in Texas have been certified as specialists in family law. Vol. I, No. 22, *The Texas Lawyer*, at 1 (September 11, 1985).

making this argument, the Bar offered no affidavits or other evidence suggesting that consumers in general had been misled by advertising of the sort used by appellant, that any of appellant's clients had been misled in any way by the advertisement, or that the statement of non-certification would have aided consumers in making an informed selection of an attorney to handle an uncontested divorce.

In mounting his defense, appellant relied primarily on the First Amendment. He contended that the statement of non-certification required by DR 2-101(C) violated his right to publish truthful information relating to the nature of the services he offers and the fees he charges. Appellant cited this Court's ruling in *Bates v. State Bar of Arizona,* 433 U.S. 350 (1977), which approved an advertisement remarkably similar to appellant's. He further argued that the statement of non-certification required by Texas served no legitimate state interest, let alone a compelling one, since it actually misleads consumers by suggesting that non-certified attorneys are not competent to handle uncontested divorce proceedings.

To bolster his arguments, appellant submitted a number of affidavits from clients who had retained him after seeing his advertisement. These affidavits established that the clients would not have understood the statement of non-certification, but instead would have concluded that appellant was not qualified or that he was not properly licensed to handle uncontested divorce cases. Moreover, to counter the State Bar's claim, the affidavits further stated that the advertisement had not led the clients to believe that the appellant exclusively handled uncontested divorces or that he claimed to have a higher degree of expertise in divorce law than other practitioners. Appellant

also submitted affidavits from other attorneys in the Lubbock area attesting to the fact that attorneys who have been certified as specialists in family law charge higher fees than appellant for routine matters such as uncontested divorces.

In a brief order issued on January 28, 1985, the District Court granted the Bar's motion for summary judgment, finding that no material facts were in dispute. The court, which did not address appellant's constitutional claim, ordered appellant suspended from the practice of law for six months, beginning on February 11, 1985, and directed him to notify each of his clients of the suspension (App. 14a). The court later delayed the effective date of the suspension until March 1, 1985, to give appellant time to put his clients' affairs in order (App. 16a).

Appellant promptly appealed to the Court of Appeals of Texas for the Seventh Supreme Judicial District, challenging the District Court's ruling primarily on First Amendment grounds. After briefing and argument, on May 20, 1985, the Court of Appeals affirmed the finding that appellant's advertisement violated DR 2-101(C)(2). In so ruling, however, the court expressly declined to consider the merits of appellant's First Amendment claim, observing that "it is not our function as an intermediate appellate court to nullify or alter" a rule promulgated by the State Supreme Court (App. 10a). However, the court reversed the District Court's imposition of a six-month suspension, concluding "that the punishment is so harsh as to constitute an abuse of discretion." (App. 13a). In accordance with its opinion, the court remanded the case to the trial judge for reconsideration of the sanction which should be imposed.

Following the Court of Appeals' ruling, appellant

sought to have the suspension lifted pending further appellate review. In a brief order issued on May 24, 1985, the Court of Appeals denied appellant's request, on the ground that section 24 of the State Bar Rules, Tex. Rev. Civ. Stat. Ann. art. 320a-1, § 24, expressly forbids the granting of any stay pending appeal to an attorney who has been suspended or disbarred from practice. Appellant thereafter filed a petition with the Supreme Court of Texas requesting that his suspension be lifted pending review by that Court, which was denied on June 26, 1985.[3]

Litigation on the merits proceeded as well, with both sides filing applications for writs of error with the Texas Supreme Court. Appellant reiterated his First Amendment challenge, and appellee argued that the six-month suspension should be reinstated. On September 11, 1985, ten days after appellant completed serving his six-month suspension, the Texas Supreme Court issued a one line order "refus[ing]" both applications with the notation "No Reversible Error." (App. 1a). As a result, no court has yet addressed the constitutionality of DR 2-101(C))(2), even though it was the sole basis for appellant's six-month suspension from the practice of law.

---

[3]Appellant recognized the barrier posed by section 24 at the time the District Court issued its ruling. Accordingly, he filed an action, *Daves v. State Bar of Texas,* Civil Action No. CA-5-85-25 in the United States District Court for the Northern Division of Texas (Lubbock Division), pursuant to 42 U.S.C. § 1983, seeking to enjoin enforcement of the suspension order until appellant had exhausted all available avenues of appellate review. Following briefing and argument, the District Court denied appellant's motion on grounds of "comity and judicial economy." Order of February 28, 1985. Appellant thereafter filed a petition for a stay of the suspension with this Court, which was presented to Justice White, and was denied on April 12, 1985 (Docket No. A-770). No relief was sought from the United States Court of Appeals for the Fifth Circuit.

THIS APPEAL PRESENTS AN IMPORTANT QUESTION UNDER THE FIRST AMENDMENT.

In the eight years since its decision in *Bates v. State Bar of Arizona,* 433 U.S. 733 (1977), this Court has revisited the issue of attorney advertising on several occasions. *Zauderer v. Office of Disciplinary Counsel,* 105 S. Ct. 2265 (1985); *In re R.M.J.,* 455 U.S. 191 (1982); *In re Primus,* 436 U.S. 412 (1978); *Ohralik v. Ohio State Bar Ass'n,* 436 U.S. 447 (1978). Read together, these cases firmly establish that the First Amendment forbids a state from imposing broad restrictions on attorney advertising. Despite their divergent facts, these decisions are based on a recognition that promoting the free flow of information about lawyers' services and fees significantly benefits consumers and serves the interests protected by the First Amendment.

The First Amendment question presented here is substantial. The Texas rule at issue is directly at odds with the decision of this Court in *Bates,* is in conflict with the Court's other attorney advertising decisions, and fails to meet the general test for restrictions on commercial speech set forth in *Central Hudson Gas & Electric Corp. v. Public Service Comm'n,* 447 U.S. 557 (1980) ("*Central Hudson*"). If allowed to stand, the Texas rule may well signal to other states that *Bates* and its progeny can be circumvented by imposing burdensome "disclaimer" requirements that prevent advertising just as effectively as broad bans.

At the outset, it is essential to recall what prior decisions of this Court have expressly authorized in the area of lawyer advertising. In *Bates,* this Court held that lawyers must be permitted to advertise the fees they charge for certain "routine" services — including uncontested divorces. 433 U.S. at 372. The Court concluded that this sort of

price advertising is not "inherently" misleading, and therefore cannot be prohibited on that basis. *Id.; see also In re R.M.J.*, 455 U.S. at 372; *Zauderer,* 105 S. Ct. at 2276 n. 9. In *In re R.M.J.*, the Court held that a lawyer must be permitted to advertise the areas of the law in which he practices, provided that the lawyer's description is not misleading. 455 U.S. at 205. And in *Zauderer,* the Court affirmed the principle that non-deceptive advertising designed to attract clients who have specific legal problems is protected under the First Amendment. The Court also held that a state cannot restrict the use of illustrations in advertising for legal services, unless it can show that consumers will be misled. 105 S. Ct. at 2278-81.

Against this backdrop, it is clear that appellant's advertising falls well within the category of protected speech defined by the Court's prior decisions. As even a cursory comparison makes clear, appellant's advertisement, in both form and substance, is not materially different than the one this Court approved in *Bates. Compare* Appellant's Advertisement, *supra* at 4, with *Bates*, 433 U.S. at 385. Indeed, by any appropriate measure, appellant's advertisement is less vulnerable to challenge than the one at issue in *Bates.* Appellant's advertisement is entirely factual in nature and contains none of the subjective, self-promotional language, such as "Legal Services At Reasonable Rates," that troubled several members of the Court in *Bates.* 433 U.S. at 386 (Burger, C.J., concurring in part, dissenting in part), *id.* at 394-95 (Powell, J., concurring in part, dissenting in part). Accordingly, since the Texas rule cannot be reconciled with this Court's ruling in *Bates,* this case raises substantial First Amendment questions that warrant consideration by this Court.

Review by this Court is also required because the Texas rule is not reasonably related to advancing an important governmental interest. Following this Court's decision in *Zauderer,* there can be no question that lawyer advertising "may be restricted only in the service of a substantial governmental interest, and only through means that directly advance that interest." 105 S. Ct. at 2275, *citing Central Hudson,* 447 U.S. at 566. In the Texas courts, appellee sought to justify the rule by claiming that the non-certification statement is necessary because advertisements such as appellant's, which focus on only one practice area, suggest that the attorney "exclusively takes such cases and that he has most likely developed a high degree of expertise in this area" and that the non-certification statement informs the public that "objective professional standards exist for that area of the law and that the advertising attorney has not yet qualified for certification."

There are several serious flaws in the Bar's approach which merit review by this Court. In the first place, the premise of the Bar's argument — that advertising a practice area such as "uncontested divorces" is inherently misleading — has already been squarely rejected by this Court. *Bates,* 433 U.S. at 372-74; *In re R.M.J.,* 455 U.S. at 199. Moreover, while *Bates* and *In re R.M.J.* left open the possibility of state regulation where experience shows that there is in fact confusion on the part of the public, the Bar has pointed to nothing which suggests that the sort of advertising employed by appellant has in fact misled consumers, and the undisputed record in this case demonstrates the contrary.

In fact, Texas has done precisely what this Court has repeatedly said states are forbidden from doing — it has stifled lawyer advertising on the basis of untested and

essentially paternalistic assumptions concerning the ability of the public to understand advertising related to routine legal services. *Bates,* 433 U.S. at 381; *In re R.M.J.,* 455 U.S. at 200 n.11; *Zauderer,* 105 S. Ct. at 2277. It is hard to imagine how anyone could believe that a disclaimer of any sort is necessary for an advertisement that simply recites that an attorney is available to handle uncontested divorce proceedings at a fixed fee. If there is no general presumption that all attorneys are competent to handle uncontested divorce cases, particularly in a state that has a "no-fault" divorce law, then there is no presumption of competence at all attaching to a license to practice law. Absent some showing by the Bar that there are significant problems caused by an even more objective version of the advertisement approved by the Court in *Bates,* states cannot, in effect, override the prior decisions of this Court.[4]

Indeed, the need for this Court's intervention is particularly strong here, since the rule imposed by Texas will actually harm the public. As is evident from the language of the statement of non-certification, and as the unrebutted record in this case shows, the public will not understand the "disclaimer." Consumers will not unreasonably conclude that an attorney who tars himself with the non-certification label is unqualified to handle the legal matters that are the subject of his advertisement. In fact, the Chairman of the Texas Board of Legal Specialization has recently acknowledged that the public might not under-

[4]Certification as a specialist in family law calls for expertise well beyond that required to handle uncontested divorces. In order to be certified, an attorney must demonstrate expertise in a wide range of fields, including criminal law, tort law, taxation, trusts and estates, as well as contested and uncontested divorces. Thus, a lawyer who exclusively handles uncontested divorces cannot quality as a specialist in family law because the attorney would not have the requisite expertise and experience handling cases in the other areas of practice covered.

stand the disclaimer required by DR 2-101(C)(2) or realize how few lawyers have been certified as specialists. Vol. I, No. 22, *The Texas Lawyer,* 1, at 3 (September 11, 1985). As a result, consumers will be dissuaded from consulting non-certified attorneys who advertise, even though the attorneys are able and willing to handle their cases, often on a low-cost basis. Inevitably, the Texas rule will result in a sharp decline in advertising by non-certified lawyers, and, concomitantly, a reduction in cost competition for legal services. Indeed, the only beneficiaries of the Rule are the 389 Texas lawyers who are certified as family law specialists, since they can advertise without fear of competition from their non-certified colleagues, even if they charge higher fees. The ultimate loser, of course, is the Texas consumer.[5]

We recognize that the Court has on a number of occasions suggested that a state may require disclaimers to guard against consumer deception, and that greater disclosure — not an outright prohibition — is the favored remedy. Nonetheless, the Court has repeatedly stressed that even disclosure requirements must be "reasonably related to the State's interest in preventing deception of consumers" in order to be sustained. *Zauderer,* 105 S. Ct. at 2282; *see also id.* at 2285 (Brennan, J., concurring in part and dissenting in part); *In re R.M.J.,* 455 U.S. at 203; *Central Hudson,* 447 U.S. at 564-65; *Miami Herald Publishing Co. v. Tornillo,* 418 U.S. 241, 246 (1974). And the Court has warned that "unjustified and unduly bur-

---

[5]Mr. Daves' case is not an isolated one. According to one commentator, the State Bar is now bringing a number of enforcement actions to compel strict compliance with DR 2-101(C)(2), and several lawyers have been severely disciplined for violations of the rule. Johnson, *Yellow Pages Legal Ads in Texas: The Complexities of DR 2-101(B) & (C),* 17 St. Mary's Law J. 1, 2-3 nn. 4 & 5 (1985).

densome disclosure requirements might offend the First Amendment by chilling protected commercial speech." *Zauderer,* 105 S. Ct. at 2282.

Despite the contention of the State Bar, this case does not involve a "disclaimer." To the contrary, the requirement imposed by Texas serves a far different purpose than providing information to the public – it acts as and is intended to act as a significant deterrent, if not an outright prohibition, against advertising. The language mandated by the rule conveys an unmistakable message to consumers – the non-certified lawyer who advertises is not competent and should be avoided. We submit that whatever the Court meant in *Bates, In re R.M.J.* and *Zauderer* about the right of a State to require disclaimers, it did not envision that a rule of this kind would be upheld simply because it is called a disclaimer rather than a ban.

CONCLUSION

For the foregoing reasons, this Court should note probable jurisdiction. Because the Texas rule is in direct conflict with *Bates* and a number of the Court's other rulings, and because no Texas court has yet addressed the constitutional issue, appellant suggests in the alternative that it would be appropriate for the Court to note probable jurisdiction, vacate the decision below, and remand the case to the Supreme Court of Texas for further consideration, particularly in light of the Court's recent decision in

Zauderer. This alternative would guarantee that the Supreme Court of Texas has an opportunity to fully consider the constitutionality of the rule prior to review by this Court.

Respectfully submitted,

David C. Vladeck
(Counsel of Record)
Alan B. Morrison
John Cary Sims

Public Citizen Litigation Group
Suite 700
2000 P Street, N.W.
Washington, D.C. 20036
(202) 785-3704

Attorneys for Appellant

November 6, 1985

APPENDIX

APPENDIX A

SUPREME COURT OF TEXAS
P.O. Box 12248
Supreme Court Building
Austin, Texas 78711
Mary M. Wakefield, Clerk

September 11, 1985

Mr. Jerry L. Zunker
State Bar of Texas
P.O. Box 12487
Austin TX 78711

Ms. Adele M. Winn
State Bar of Texas General Counsel
P.O. Box 12487 Capitol Station
Austin TX 78711

Mr. Mark Hall
O'Shea, Hall & Hart
1402 Texas Avenue
Lubbock TX 79401

RE: Case No. C-4303

STYLE: THE STATE BAR OF TEXAS
v. RUSSELL D. DAVES

Dear Counsel:

Both applications for writ of error in the above referenced case were this day refused with the notation, No Reversible Error.

Respectfully yours,

Mary M. Wakefield, Clerk
/s/ _____ *

* A minute order stating that both petitions were "refused, No Reversible Error," was also entered by the Court on September 11, 1985.

APPENDIX B

Russell D. DAVES, Appellant,
v.
The STATE BAR OF TEXAS, Appellee.
No. 07-85-0049-CV.
Court of Appeals of Texas
Amarillo.
May 20, 1985
Rehearing Denied June 4, 1985.

Before REYNOLDS, C.J., and DODSON and COUNTISS, JJ.

REYNOLDS, Chief Justice.

Russell D. Daves, a Lubbock attorney licensed by the Supreme Court of Texas to practice law in this state, was summarily adjudged guilty of an act of professional misconduct, and his license to practice law was suspended for six months. Although the professional misconduct was conclusively established, we conclude that the trial court abused its judicial discretion by excessively disciplining Daves under this summary judgment record. Consequently, we reverse and remand.

Daves was accused by the State Bar of Texas and found guilty by the court of violating DR 2-101, a disciplinary rule of the Texas Code of Professional Responsibility, by advertising his services in an area of family law without stating in the advertisement, as required by DR 2-101(C)(2), that he was "Not certified by the Texas Board of Legal Specialization." The offending advertisement, appearing in this form,

UNCONTESTED DIVORCE

No property, No Children $75
Property or Children $150
Property and Children $175

Court costs not included in above Fees
No charge for Initial Consultation
Above Fees for Lubbock County only

RUSSELL D. DAVES
Attorney At Law

1111 Main
763-1111

was published on 27 October 1983 in the Lubbock Avalanche Journal. The advertisement and the penalty imposed for its publication are grounded on the controlled practice of law in this state, to which we briefly refer.

Attorneys licensed to practice law in Texas are required to be members of the State Bar of Texas, an integrated bar, which is governed by the State Bar Act and administratively controlled by the Supreme Court of Texas. Tex.Rev.Civ.Stat.Ann. art 320a-1 (Vernon Supp.1985). The legislation provides that any attorney admitted to practice in this state is subject to the disciplinary jurisdiction of the Supreme Court and its administrative agent, the State Bar, *id.* § 12(a), and that from time to time, the Supreme Court may adopt rules and regulations for, among other things, the conduct of the State Bar and the discipline of its members. *Id.*, §§ 8(a), 12(b). In providing for the Court's rule-making powers, the legislation calls for the Court's proposed rules and regulations to be submitted to each registered member of the State Bar for a vote, and specifies that no rule or regulation shall be promulgated if it has not received a majority of the votes cast by at least 51 percent of the registered members who shall have voted in the election. *Id.*, § 8(b).

The Supreme Court adopted the State Bar Rules, characterized as being in aid of the Court's inherent power to regulate the practice of law. Supreme Court of Texas, Rules Governing the State

Bar of Texas, preamble (1984) (appearing in volume 1A of Texas Revised Civil Statutes Annotated at page 70 (Vernon Supp.1985)). Included within the rules, as section 9 of article X, is the Texas Code of Professional Responsibility, which embraces the disciplinary rules, a violation of which empower a district court to impose one or more of these sanctions: (1) a public reprimand, (2) suspension for a fixed period not to exceed three years, (3) disbarment without reinstatement for at least five years, (4) restitution for financial injury, and (5) costs of court and attorney fees. Supreme Court of Texas, Rules Governing the State Bar of Texas, art. X, § 8 (1984).

To promote the availability, accessibility and quality of the service of lawyers to the public in particular fields of law, the State Bar established a plan for, and granted to its created Texas Board of Legal Specialization the general jurisdiction over, the recognition and regulation of specialization in the law. In brief, the plan provides for the issuance of a certificate of special competence in particular fields of law to any lawyer who has actually practiced law on a full-time basis for a minimum of five years, and who demonstrates sufficient knowledge, proficiency and experience in the particular field of law for which certification is sought. One of the fields of law for which standards and requirements for certification have been prescribed is that of family law specialists.

By its 21 July 1982 order, the Supreme Court adopted and promulgated, effective 1 September 1982, a disciplinary rule, DR 2-101, to furnish guidelines for, *inter alia*, attorney advertising without submitting the rule to a vote of the members of the State Bar since two previous referendums on the matter failed because less than 51 percent of the members had voted in the elections. 635-636 S.W.2d (Texas Cases) XLI-XLIII. The rule provides that a lawyer advertising a legal service in an area of law,

> Who has not been awarded a Certificate of Special Competence by the Texas Board of Legal Specialization in the area so advertised must state with respect to each area, "Not certified by the Texas Board of Legal Specialization." Where the area so advertised has not been designated as an

> area in which a lawyer may be awarded a Certificate of Special Competence by the Texas Board of Legal Specialization, the lawyer may also state, "No designation has been made by the Texas Board of Legal Specialization for a Certificate of Special Competence in this area." Such statements must be displayed conspicuously so as to be easily seen or understood by any consumer.

Id.; Supreme Court of Texas, Rules Governing the State Bar of Texas, art. X, § 9 (Code of Professional Responsibility) DR 2-101(C)(2) (1984).

Following the publication of the advertisement reproduced above, the State Bar of Texas, acting by the Grievance Committee for State Bar District Number 16, instituted these disciplinary proceedings against Daves. The State Bar alleged that the advertisement by Daves constituted professional misconduct in violation of DR 2-101(C), and prayed that he be reprimanded, suspended or disbarred as the facts shall warrant.

Answering, Daves, whose pleadings affirmatively establish that he has been denied a Certificate of Special Competence as a family law specialist by the Texas Board of Legal Specialization, admitted placing the advertisement on or about 27 October 1983 in the Lubbock Avalanche Journal, but he defended his action on the grounds that DR 2-101 is unconstitutional in its entirety or, alternatively, is unconstitutional as applied to his advertisement, which he alleged was constitutionally protected commercial speech. Later, Daves amended his answer to assert that DR 2-101 is invalid by reason of the Supreme Court's failure to submit it to the registered members of the State Bar as required by the State Bar Act.

The State Bar moved for summary judgment on the grounds that Daves' advertisement violated DR 2-101(C) by not containing the required disclaimer of certification. The support recited for the motion was the pleadings.

Daves filed a response to the State Bar's motion for summary judgment, asserting that the State Bar was not entitled to judgment merely because he "has admitted publishing a newspaper advertisement which bears his name and designation as an at-

torney at law and uncontested divorce as an area in which he practices, without stating with respect to the advertised area of law that he was 'Not Certified by the Texas Board of Legal Specialization'" for several reasons. The reasons given to avoid the summary judgment sought were forty-six alleged fact questions and no evidence, as well as insufficient evidence as a matter of law, to support the State Bar's motion. Attached to the response were seven affidavits, remarkedly similar in content, by affiants who stated they had consulted with Daves as a result of the advertisement. The affiants further stated, in short, that they did not find the advertisement to be inherently false, deceptive, misleading, untruthful or to contain any misstatement of fact, and if the advertisement had contained the noncertification statement, they would have assumed Daves had less qualifications than attorneys in general or was not properly licensed or certified to do the advertised work.

Before the date set for a hearing on the summary judgment motion, Daves filed three additional affidavits. One was executed by a lay person following the format of those just mentioned; another was subscribed by an attorney licensed to practice less than five years; and the other was Daves' personal affidavit. In the latter two affidavits, the attorney and Daves, in addition to venturing comments concerning attorney advertising as it relates to the proscriptions of DR 2-101, expressed their legal opinion that the Supreme Court exceeded its legislatively delegated authority by promulgating DR 2-101 and related disciplinary rules without submitting them to a vote of the registered members of the State Bar. Following a hearing on the State Bar's motion, the court, being

> of the opinion that. . . the State Bar of Texas is entitled to summary judgment and the Defendant Russell D. Daves has as a matter of law by his conduct, concerning which there exist [*sic*] no disputed material issue of fact, violated Disciplinary Rule 2-101(C)(2) of the Code of Professional Responsibility, for which reason he should be suspended form the practice of law. . .

ordered, adjudged and decreed that Daves be suspended from the practice of law in Texas for a period of six months.

Appealing, Daves attacks the court's judgment with seven points of error. We first consider his sixth point by which he submits that DR 2-101 is unconstitutional because the Supreme Court promulgated it without submitting it to a vote of the registered members of the State Bar as required by the State Bar Act, article 320a-1, *supra.*

[1-3] As previously noted, the State Bar Act calls for the rules and regulations proposed by the Supreme Court to be submitted to each registered member of the State Bar for a vote, validates an election thereon only if a minimum of 51 percent of the members registered shall have voted at the election, and then provides that:

> No rule or regulation shall be promulgated that has not received a majority of the votes cast in the manner provided above.

Article 320a-1, *supra* § 8(b). Notwithstanding, the Legislature recognized that the State Bar Act

> is in aid of the judicial department's powers under the constitution to regulate the practice of law and not to the exclusion of those powers.

Id., § 2. Given this recognition, the Supreme Court, expressing and exercising its own inherent power to regulate and control the practice of law, entered its 19 June 1979 order specifying that the State Bar shall be governed by the State Bar Act "as supplemented by this order and subsequent orders." 1A Tex.Rev.Civ.Stat.Ann. 53-54 (Vernon Supp.1985). The inherent power referred to is that power given by the present constitution of 1876. *Scott v. State,* 86 Tex. 321, 24 S.W. 789, 790 (1894). Thus, even though the State Bar Act is utilized as an aid in the Court's exercise of its inherent power to regulate and control the practice of law, *State Bar of Tex. v. Heard,* 603 S.W.2d 829, 831 (Tex.1980), the provisions of the Act do not, by the Act's own language, and cannot, by virtue of the Court's inherent power under the Constitution, detract from or limit the Court's primary responsibility to regulate and control the legal profession by its own orders. When a provision of the State Bar Act conflicts with an order of the Supreme Court regulating and controlling the practice of law, the statutory provision must yield to the Court's

rule. *Banales v. Jackson,* 601 S.W.2d 508, 512 (Tex.Civ.App.—Beaumont), *motion to review under Rule 21c denied,* 610 S.W.2d 732 (Tex.1980).

[4] It naturally follows, then, that the Court's exercise of the power inherited from the constitution to promulgate DR 2-101 cannot render the rule unconstitutional merely because its promulgation did not follow a statutory provision enacted as an aid to, but not to the exclusion of, the Court's exercise of its inherent power. In this regard, it should be recognized that the Court did not unilaterally ignore section 8(b) of the State Bar Act as an aid in discharging its responsibility. As recited in its order adopting DR 2-101, the Court had twice submitted the matter of advertising to a vote of the State Bar members, less than 51% of whom voted, but those voting overwhelmingly favored the amendments. 635-636 S.W.2d (Texas Cases) XLI. The sixth point of error is overruled.

We next notice Daves' points of error three, four, five and seven. By this series of points, he advances the central contention that DR 2-101, or at least section (C) thereof, is, and the trial court erred in not finding it to be, an unconstitutional rule that violates commercial free speech protected by the First and Fourteenth Amendments to the United States Constitution. In this connection, Daves argues that his simple advertisement is protected as commercial free speech under the First Amendment by the holding of *Bates v. State of Arizona,* 433 U.S. 350, 97 S.Ct. 2691, 53 L.Ed.2d 810 (1977), and that it is not misleading under the criteria of *In the Matter of R.M.J.,* 455 U.S. 191, 102 S.Ct. 929, 71 L.Ed.2d 64 (1982), so as to be subject to the restraint of the disclaimer required by DR 2-101.

[5-6] At the outset we observe that *Bates* did not foreclose the possibility that some disclaimer might be required in advertising by lawyers to prevent the consumer from being misled, 433 U.S. at 384, 97 S.Ct. at 2709, and *R.M.J.* did not pass on the constitutionality of the disclaimer required for certain lawyer advertising in Missouri, which was not challenged. 455 U.S. at 204, 102 S.Ct. at 938. We further observe that our Supreme Court adopted DR 2-101, and the related rules, as advertising guidelines to

remove the uncertainty and confusion surrounding attorney advertising, solicitation and trade names in the aftermath of *Bates.* 635-636 S.W.2d (Texas Cases) XLI. In this setting, we presume the Court intended DR 2-101, and so fashioned it, to comply with the restraint constitutionally permitted to prevent false, deceptive or misleading advertising.

[7] However, we do not undertake an evaluation of the specific challenges made by Daves to the constitutionality of DR 2-101. Accepting the Supreme Court's inherent power to adopt the rule, it is not our function as an intermediate appellate court to nullify or alter it, for once the Court decides upon a rule of law, the decision is in the absence of a controlling decision by the United States Supreme Court, binding on lower courts, *Swilley v. McCain,* 374 S.W.2d 871, 875 (Tex.1964), until the Court changes the rule. *Woodard v. Texas Dept. of Human Resources,* 573 S.W.2d 596, 598 (Tex.Civ.App.—Amarillo 1978, writ ref'd n.r.e.). This principle is particularly applicable to the Court's rules regulating and controlling the practice of law, *Banales v. Jackson, supra,* the constitutionality of which may be passed on by that Court. *Cameron v. Greenhill,* 582 S.W.2d 775, 777 (Tex.1979). Points three, four, five and seven are overruled.

We now address Daves' first point of error by which he contends that the State Bar was not entitled to judgment as a matter of law. This obtains, he argues, because the State Bar did not establish all of the essential elements of the professional misconduct alleged since it only referred to the pleadings as support for its summary judgment motion, and neither attached summary judgment proof to the motion nor otherwise proved the non-eixstence of the forty-seven fact issues he alleged existed. To support his argument, he cites *City of Houston v. Clear Creek Basin Authority,* 589 S.W.2d 671 (Tex.1979) and *Americana Motel Inc. v. Johnson,* 610 S.W.2d 143 (Tex.1980), for the principle that pleadings, sworn or unsworn, do not constitute summary judgment proof, *Chandler v. Carnes Co.,* 604 S.W.2d 485 (Tex.Civ.App.—El Paso 1980, writ ref'd n.r.e.), and *Texas Nat. Corp. v. United Systems Internat'l, Inc.,* 493 S.W.2d 738 (Tex. 1973), for the principle that a motion for summary judgment

must be supported by proof attached thereto contained in affidavits in support thereof, and *Wilcox v. St. Mary's University of San Antonio,* 531 S.W.2d 589 (Tex.1975), as well as other cases, for the principle that any doubt as to the existence of a disputed material fact should be resolved in favor of the non-movant.

[8] We recognize the validity of those principles of law and acknowledge their application in the usual summary judgment proceeding, but the principles are not controlling in the light of this summary judgment record. Although, generally, pleadings, even if sworn to, are not summary judgment proof, there are exceptions to that general principle. In certain situations, summary judgment is properly rendered on the pleadings, *Texas Nat. Corp. v, United Systems Internat'l, Inc., supra,* at 741, when, for example, a party pleads himself out of court by pleading facts which affirmatively negate his cause of action, *Texas Department of Corrections v. Herring,* 513 S.W.2d 6, 9 (Tex.1974), or the pleading of a sworn account is not denied by the required oath, *Hidalgo v. Surety Savings and Loan Association,* 462 S.W.2d 540, 543 n. 1 (Tex.1971), or a party pleads facts which constitute a judicial admission entitling the movant to judgment. *Houchins v. Scheltz,* 590 S.W.2d 745, 750 (Tex.Civ.App.—Houston [14th Dist.] 1979, no writ).

[9] To establish the profesional misconduct alleged, the State Bar was required to show conclusively that (1) Daves was not certified as a family law specialist and (2) he published the advertisement *sans* the disclaimer of certification. Daves judicially admitted both facts in his pleadings. The judicial admissions are conclusive upon Daves, relieving the State Bar from the burden to otherwise prove the admitted facts, and barring Daves from disputing them. *Mendoza v. Fidelity & Guar. Ins., Etc.,* 606 S.W.2d 692, 694 (Tex.1980). Thus, these judicial admissions entitled the State Bar to a summary adjudication that Daves was guilty of the professional misconduct alleged, *Houchins v. Scheltz, supra,* without further proof to support that portion of the summary judgment rendered, *Porter v. Lumbermen's Investment Corp.,* 606 S.W.2d 715, 717 (Tex.Civ.App.—Austin 1980, no writ), especially since the rule authorizing summary judgments specifies

that admissions are proper, summary judgment proof. Tex.R.Civ.Pro. 166-A(c).

[10] In holding that the pleadings justified the summary adjudication of professional misconduct, we have not overlooked Daves' contentions that his allegations of forty-seven unresolved fact issues pertaining to the constitutionality of DR 2-101 preclude the adjudication. However, with the acceptance of the binding force of the disciplinary rule on the lower courts, the allegations do no more than advance immaterial fact issues which, as such, will not defeat the motion for summary judgment insofar as it is grounded on professional misconduct. *Borg-Warner Acceptance Corp. v. C.I.T. Corp.*, 679 S.W.2d 140, 144 (Tex.App.—Amarillo 1984, writ rf'd n.r.e.). The first point of error is overruled.

[11] We now reach Daves' second point of error, his contention that the trial court abused its discretion by ordering him suspended from the practice of law for six months upon this record. The State Bar counters that the suspension imposed was within the range of sanctions authorized and, therefore, it cannot be said that the court acted in an arbitrary and unreasonable manner so as to abuse its discretion. The contention and counter-contention present a question of law for decision. *State v. O'Dowd,* 158 Tex.348, 312, S.W.2d 217, 221 (1958).

[12] The parties are agreed that in a disciplinary proceeding, the punishment affixed is a matter for the exercise of the sound discretion of the trial court. *State v. Ingram,* 511 S.W.2d 252, 253, (Tex.1974). The very authorization of a wide range of sanctions for violations of the disciplinary rules contemplates a just discipline for the misconduct committed. As a result, the punishment imposed may be so light, or so heavy, as to constitute an abuse of discretion. *Id.*

To determine the appropriate measure of discipline, it is provided that the trial court, which in its discretion may conduct a separate evidentiary hearing, shall consider, in addition to any other relevant matters, the factors of

> the nature and degree of misconduct for which the respondent is being disciplined, the seriousness and circumstances

> attending the misconduct, assurance that those who seek legal services will be insulated from unprofessional conduct, the profit to the attorney or the injury or hardship to others resulting from the misconduct, avoidance or repetition, the deterrent effect upon others, the maintenance of respect for the honor and dignity of the legal profession, and the conduct of the respondent during the course of the investigation and trial of the disciplinary action. In addition thereto, the disciplinary record of the respondents is admissible on the issue of the appropriate measure of discipline to be imposed.

Supreme Court of Texas, Rules Governing the State Bar of Texas, art. X, § 23(B) (1984).

[13] In this summary judgment proceeding, no separate evidentiary hearing was conducted. Although there are references to other advertisings by Daves, the contents of which are not recorded, the State Bar only alleged, and only proved, the one advertisement reproduced in the forepart of this opinion. None of the other factors to be considered by the trial court was made the subject of the State Bar's summary judgment proof or, apart from the affidavits submitted by Daves, otherwise evidenced for the record. Consequently, and aside from any mitigating influence the affidavits submitted by Daves has on the punishment factors, this summary judgment record shows just one violation of the advertising rule as support for the six-month suspension imposed. On this record, then, our view is that the punishment imposed is so harsh as to constitute an abuse of discretion. As a result, Daves' second point of error is sustained.

It follows that the summary judgment rendered must be, and it is, reversed, and the cause is remanded to the trial court.

APPENDIX C

No. 84-504190

THE STATE OF TEXAS	) IN THE DISTRICT COURT OF
V.	) LUBBOCK COUNTY, TEXAS
RUSSELL D. DAVES	) 237 JUDICIAL DISTRICT

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND SUSPENDING DEFENDANT FROM THE PRACTICE OF LAW

On the 24th day of October, 1984, the Court heard the motion for summary judgment filed in this cause by the District 16 Grievance Committee of the State Bar of Texas. The Defendant, Russell D. Daves, appeared in pro se and the Plaintiff, the District 16 Grievance Committee of the State Bar of Texas appeared by and through its counsel, John R. Gladney. The Court, after examining the pleadings and the summary judgment evidence and hearing the arguments of counsel, is of the opinion that the Plaintiff, the District 16 Grievance Committee of the State Bar of Texas is entitled to summary judgment and the Defendant Russell D. Daves has, as a matter of law by his conduct, concerning which there exist no disputed material issue of fact, violated Disciplinary Rule 2-101(C)(2) of the Code of Professional Responsibility, for which reason he should be suspended from the practice of law as hereinafter ordered.

IT IS ACCORDINGLY ORDERED, ADJUDGED, AND DECREED that the Defendant, Russell D. Daves, be SUSPENDED from the practice of law in Texas for a period of 6 months, beginning on February 11, 1985 and ending on August 12, 1985.

It is further ORDERED that the Defendant, Russell D. Daves, during said suspension, is hereby enjoined from practicing law in Texas, holding himself out as an attorney at law, performing any legal services for others, accepting any fee directly or indirectly for legal services, appearing as counsel or in any representative capacity in any proceeding in any Texas court or before any Texas administrative body, or holding himself out to others or using his name, in any manner, in conjunction with the words "attorney at law," "counselor at law," or "lawyer."

It is further ORDERED that the Defendant immediately notify each of his current clients in writing of his suspension, and return to clients all of their property, including unearned fees. Said Defendant is ORDERED to file with this Court within 15 days of the effective date of this judgment an affidavit stating that he has given notice to all of his clients of his suspension and has returned the client's files, property, and unearned fees to them.

IT IS FURTHER ORDERED that the said Russell D. Daves, on or before the 11th day of February, A.D. 1985, surrender his Texas law license and permanent State Bar Card to the clerk of the Supreme Court of Texas.

IT IS FURTHER ORDERED that the Clerk of this Court shall forward a certified copy of the Original Formal Complaint on file herein, along with a copy of this judgment to each Clerk of the Supreme Court of Texas, Supreme Court Building, Austin Texas, 78711, and to the General Counsel of the State Bar of Texas, P.O. Box 12487, Austin, Texas 78711.

IT IS FURTHER ORDERED that all costs of court herein incurred shall be taxed against the Defendant, Russell D.Daves, for which the Clerk may have his execution if they are not timely paid.

Signed this the 28th day of January, A. D. 1985.

/s/_____

John R. McFall
Judge Presiding.

No. 84-504190

THE STATE OF TEXAS	) IN THE DISTRICT COURT OF
V.	) LUBBOCK COUNTY, TEXAS
RUSSELL D. DAVES	) 237 JUDICIAL DISTRICT

ORDER EXTENDING EFFECTIVE DATE OF SUSPENSION

BE IT REMEMBERED THAT ON THE 4th day of February, 1985, came on to be heard the Motion of Defendant, RUSSELL D. DAVES, to extend the effective date of his suspension from February 11, 1985 until March 1, 1985.

After hearing such Motion, the Court is of the opinion that good cause has been shown for the extension of the effective date of such suspension, and that it would be in the interest of justice and the best interest of the clients of RUSSELL D. DAVES to extend the effective date of the suspension of RUSSELL D. DAVES from the practice of law in Texas in order to allow RUSSELL D. DAVES to wind down his business.

IT IS ACCORDINGLY ORDERED, ADJUDGED, AND DECREED that the Defendant, RUSSELL D. DAVES', effective date of suspension be and is hereby extended from February 11, 1985, until March 1, 1985.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the defendant, RUSSELL D. DAVES, be suspended from the practice of law in Texas for a period of six months, beginning on March 1, 1985, and ending on Spetember 1, 1985.

IT IS FURTHER ORDERED that the said RUSSELL D. DAVES, on or before the 1st day of March, A.D., 1985, surrender his Texas Law License and permanent State Bar Card to the clerk of the Supreme Court of Texas.

IT IS FURTHER ORDERED that the clerk of this Court shall forward a certified copy of this Order Extending Effective Date of Suspension to each Clerk of the Supreme Court of Texas, Supreme Court Building, Austin, Texas, 78711, and to the General Counsel of the State Bar of Texas, P.O. Box 12487, Austin, Texas 78711.

IT IS FURTHER ORDERED that all provisions of the Order

granting Plaintiff's Motion for Summary Judgment and suspending Defendant from the practice of law entered by this Court on January 28, 1985, be and remain in full force and effect to the extent not in conflict with this Order Extending Effective Date of Suspension.

SIGNED this 5 day of February, A.D., 1985.

/s/_____
John R. McFall
JUDGE PRESIDING

October 30, 1985

APPENDIX D

SUPREME COURT OF THE STATE OF TEXAS

RUSSELL D. DAVES,
APPELLANT

V.

THE STATE BAR OF TEXAS,
APPELLEE

NOTICE OF APPEAL
TO THE SUPREME COURT OF THE UNITED STATES

TO THE HONORABLE JUSTICES OF SAID COURT:

COMES NOW, Russell D. Daves, and hereby gives notice, pursuant to Rule 10, of the Rules of the Supreme Court of the United States, that Russell D. Daves hereby appeals to the Supreme Court of the United States from the judgment and final order of the Supreme Court of Texas entered and issued in this preceding on September 11, 1985.

This appeal is taken pursuant to 28 U.S.C. § 1257 (2).

Respectfully submitted,

O'SHEA, HALL & HART
1402 Texas Ave.
Lubbock, TX 79401
(806) 763-4617

/s/_____
John J.C. O'Shea
Attorney for Appellant
State Bar No. 1535000

PROOF OF SERVICE

I, John J.C. O'Shea, attorney for Russell D. Daves, Respondent-Appellant herein, hereby certifies that all parties required to be served by Rule 28 of the Rules of the Supreme Court of the United States have been served, specifically, on the 25 day of October, 1985, I served a copy of the foregoing notice of appeal to the Supreme Court of the United States, by mail, first class, postage prepaid, on Adele Winn, Assistant General Counsel, State Bar of Texas, P.O. Box 12487, Austin, TX 78711, and on Jim Maddox, Attorney General of the State of Texas, Supreme Court Building, Austin, Texas, pursuant to 28 U.S.C. § 2403 (b).

/s/_____
John J.C. O'Shea

CAUSE NO. 07-85-0049-CV

IN THE
COURT OF APPEALS
FOR THE SEVENTH SUPREME JUDICIAL DISTRICT OF
TEXAS
AMARILLO, TEXAS

RUSSELL D. DAVES,
APPELLANT

V.

THE STATE BAR OF TEXAS,
APPELLEE

NOTICE OF APPEAL
TO THE SUPREME COURT OF THE UNITED STATES

TO THE HONORABLE JUSTICES OF SAID COURT:

COMES NOW, Russell D. Daves, and hereby gives notice, pursuant to Rule 10, of the Rules of the Supreme Court of the United States, that Russell D. Daves hereby appeals to the Supreme Court of the United States from the judgment and final order of the Supreme Court of Texas entered and issued in this preceding on September 11, 1985.

This appeal is taken pursuant to 28 U.S.C. § 1257 (2).

Respectfully submitted,

O'SHEA, HALL & HART
1402 Texas Ave.
Lubbock, TX 79401
(806) 763-4617

/s/_____
John J.C. O'Shea
Attorney for Appellant
State Bar No. 1535000

PROOF OF SERVICE

I, John J.C. O'Shea, attorney for Russell D. Daves, Respondent-Appellant herein, hereby certifies that all parties required to be served by Rule 28 of the Rules of the Supreme Court of the United States have been served, specifically, on the 25 day of October, 1985, I served a copy of the foregoing notice of appeal to the Supreme Court of the United States, by mail, first class, postage prepaid, on Adele Winn, Assistant General Counsel, State Bar of Texas, P.O. Box 12487, Austin, TX 78711, and on Jim Maddox, Attorney General of the State of Texas, Supreme Court Building, Austin, Texas, pursuant to 28 U.S.C. § 2403 (b).

/s/_____
John J.C. O'Shea